MACQUARIE UNIVERSITY INTERNATIONAL GOVERNANCE AND PERFORMANCE RESEARCH CENTRE

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12 February 2014

Discussion Paper: Better Regulation and Governance, Enhanced Transparency and Improved Competition in Superannuation

Macquarie University's Department of Accounting and Corporate Governance is pleased to provide Treasury with its submission on the Australian Government's Discussion Paper: Better Regulation and Governance, Enhanced Transparency and Improved Competition in Superannuation, which was released for public comment on 28 November 2013.

Macquarie University's response reflects our position as a leading educator to the Australian and global community. This submission has benefited with input from discussions with key constituents.

This submission covers the areas of Regulation, and Governance. We do not offer any comments on Enhanced Transparency details other than requiring the superannuation funds to have publicly available on their websites a copy of the annual audited financial statements that comply with applicable Australian Accounting Standards. Likewise we do not offer any comment on the Default Superannuation Market.

1. Light regulatory touch is supported

From a philosophical perspective we support the Government's proposal that any changes to the regulatory framework for Governance and Transparency should be on a 'light touch' approach. It is critical that the superannuation system has appropriate prudential regulation but at the same time does not have unnecessary administrative costs. We strongly support the Government's red tape reduction program to ensure that the superannuation system remains efficient.

2. Alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations is supported

We believe that adoption of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations in conjunction with the government's light touch approach, and along with on-going Australian Prudential and Regulation Authority (APRA) supervision, will result in a safe and efficient

superannuation system.

The adoption of an 'if not, why not' approach allows the directors (or trustees) of the superannuation fund to determine whether in the individual circumstances, those Principles and Recommendations make sense for the particular superannuation fund and in most cases we would expect, as with listed companies, that they are adopted. However if the directors believe that there are particular reasons why a specific Principle or Recommendation is not appropriate, the directors can depart from the particular requirement, provided the departure is disclosed and the reasons for the departure is explained in detail. This results in appropriate transparency and is a more efficient approach than a black letter legislative alternative.

The ASX Corporate Governance Council is currently reviewing its 16 August 2013 Corporate Governance Principles and Recommendations 3rd edition Consultation Draft following the 65 submissions made to it, and a copy of Macquarie University's 15 November 2013 submission is attached for information (Appendix 2). We suggest that the Government aligns the Superannuation Governance with the revised Corporate Governance Principles and Recommendations which are expected to be released in May 2014.

3. Response to specific Regulatory, Governance, and Transparency Questions

See Appendix A for our responses.

Macquarie University would be pleased to discuss this submission as and when required. If you require any further information or comment, please contact Keith Reilly - *keith.reilly@mq.edu.au*

Yours sincerely

Professor Nonna Martinov-Bennie and Keith Reilly - Industry Fellow
International Governance and Performance (IGAP) Research Centre
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Appendix 1

Better Regulation and Governance, Enhanced Transparency and Improved Competition in Superannuation—Focus Questions

Part 1: A Better Approach to Regulation

1. The Government has committed to identifying (in dollar terms) measures that offset the cost impost to business of any new regulation. What suggestions do you have for how the regulatory compliance burden can be reduced?

If the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations framework is adopted, then we do not believe that the one off costs will be significant given the wide spread use of the Corporate Governance Principles and Recommendations in the listed company market place.

Part 2: Better Governance

What should 'independent' mean for superannuation fund trustees and directors?

2. What is the most appropriate definition of independence for directors in the context of superannuation boards?

We suggest that the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations definition of Independence and guidance be used. We do however note that the Macquarie University submission to the Council argued for a 9 year period as being the maximum on which a director could be considered to be independent, on an 'if not, why not' basis.

Proportion and role of independent directors

3. What is an appropriate proportion of independent directors for superannuation boards?

We support alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations which state that a majority of the board should be independent.

4. Both the ASX Principles for listed companies and APRA's requirements for banking and insurance entities either suggest or require an independent chair. Should superannuation trustee boards have independent chairs?

We support alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations which state that the chair should be independent.

Process for appointing directors on superannuation trustee boards

5. Given the way that directors are currently appointed varies across funds, does it matter how independent directors are appointed?

No.

6. Should the process adopted for appointing independent directors be aligned for all board appointments?

Yes, and we suggest that the Corporations Act procedures be followed where the election of directors should be by the members.

Management of conflicts of interest

7. Are there any other measures that would strengthen the conflict of interest regime?

No. APRA prudential requirements that cover this area seem sufficient.

Ongoing effectiveness of superannuation trustee boards

8. In relation to board renewal, should there be maximum appointment terms for directors? If so, what length of term is appropriate?

We support alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations.

However in our 15 November 2013 submission to the Council we suggested that regard should be had to the United Kingdom Corporate Governance Code which requires the top 350 listed companies to have its directors subject to an annual election along with any non-executive directors who have been on the board for more than 9 years also being subject to annual elections. All other directors (outside the top 350) should be subject to an election after first being appointed and then every subsequent 3 years.

9. Should directors on boards be subject to regular appraisals of their performance?

We support alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations which state:

(a) have and disclose a process for periodically evaluating the performance of the board, its committees and individual directors; and
(b) disclose in relation to each reporting period, whether a performance evaluation was undertaken in the reporting period in accordance with that process.

Implementation issues

10. Would legislation, an APRA prudential standard, industry self-regulation or a combination be most suitable for implementing changes to governance? What would the regulatory cost and compliance impacts of each option be?

We support alignment with the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations on an 'if not, why not' basis and believe that the regulatory cost and compliance impacts would be minimal.

11. What is the appropriate timeframe to implement the Government's governance policy under each option?

For the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations which are on an 'if not, why not' basis, we suggest that a year's notice would be sufficient to implement such a framework. Assuming that the legislation is in place by say 31 November 2014, we would suggest that for financial years commencing as from 1 December 2014 would be reasonable (i.e. December 2015 or June 2016 balancers).

12. Given that there will be existing directors appointed under a variety of terms and conditions, what type of transitional rules are required?

We support the same transitional provisions that would apply to the legislation (see 11 above).

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Appendix 2: Macquarie University ASXCGC Submission 15/11/13

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Alan Cameron AO, Chair
ASX Corporate Governance Council
By Email: mavis.tan@asx.com.au

15 November 2013

Dear Alan,

Review of the Draft third edition of the ASX Corporate Governance Principles and Recommendations and proposed changes to the ASX Listing Rules and Guidance Note 9 Disclosure of Corporate Governance Practices

Macquarie University's Department of Accounting and Corporate Governance is pleased to provide the ASX Corporate Governance Council ('the Council') with its comments on the draft third edition of the ASX *Corporate Governance Principles and Recommendations* that were released for public consultation on 16 August 2013, and the ensuing proposed changes to the *ASX Listing Rules and Guidance Note 9 Disclosure of Corporate Governance Practices*.

Macquarie University's response reflects our position as a leading educator to the Australian and global community. This submission has benefited with input from discussions with key constituents, and in particular, we appreciated the opportunity to attend the ASX's national road show in Sydney on 20 September 2013, and the subsequent discussions with you and the Council's staff.

As part of the submission process, we have compared the Council's proposals with the UK (United Kingdom) Corporate Governance Code (September 2012) as that Code is recognised as the benchmark and hence, world's best practice for Corporate Governance requirements. We have also benchmarked against the South African King Code given its prominence in corporate governance literature, and the International Corporate Governance Network's Global Corporate Governance Principles. A separate publication is being prepared on how the Council's proposals line up with other major international pronouncements. We will make a copy available to the Council once finalised.

Our comparison indicates that the Council's proposals compare well with international requirements, and we congratulate the Council on the work it has done.

As detailed elsewhere in this submission, we see benefit in having consistent global requirements and we encourage the Council to engage with other local and international bodies in working towards a global Code that aligns with global Accounting, Auditing and Ethical Standards.

We acknowledge that there are philosophical differences between some of the requirements. However, the essential and common requirement is for companies to demonstrate how they are able to meet accepted corporate governance practices, and therefore, it is conducive to have a common framework of global corporate governance practices, rather than requiring each jurisdiction to continually update for new and emerging innovations in corporate governance, which this current review does by reference to various other Corporate Governance Codes.

Differing legislative requirements and cultures should not be a barrier to having common global requirements. If there are reasons for national differences in how requirements are implemented, then it is good corporate governance for those nations to publicly justify any such differences.

In particular, while we accept that the use of the term 'if not, why not' is different to the more common UK 'comply or explain', or the South African King 3 Code's 'apply or explain', any departure from the recommended corporate governance principle is quite rightly drawn to the attention of the market, and the reasons for not following the specific principle are then highlighted and considered by the market. We do not believe that this wording difference will have any effect in practice.

We note that the proposed Principles now have 3 levels of 'requirements'.

(a) The first is the 'if not, why not' mandatory disclosure of non-adoption (Listing Rule 4.10.3 disclosure).
(b) The second is meeting the requirements by having a small company's alternative, although there is no definition of what is a 'small company', an issue that we believe should be defined.
(c) The third which is a new proposal, is a requirement to disclose where an explanation is required that a director is considered by the board to be independent even though the director has a relationship (i.e. more than 9 years tenure) that does not meet the independence criteria. This disclosure does not represent an 'if not, why not' breach, hence in this instance the company can claim compliance with the Council's Principles.

Broad support for the majority of proposals

We support the majority of the proposals in the draft third edition and our specific comments are contained in the attached Appendix. In particular we strongly support the option to disclose via the website, as a way to reduce the clutter in the financial report. We also recommend that entities have the option to just provide a clear statement of compliance with the Principles, or note where there is non-compliance, and provide, where deemed necessary, concise comments on particular Principles.

Specific proposals not supported

Proposals that we do not support and which are commented on in further detail in the Appendix are:

Proposed Recommendation 1.5 (c) (2) Gender Equality Indicators

Whilst we support elimination of duplication in preparing and reporting on corporate governance Principles, we question whether allowing companies the option to report the Gender Equality Indicators in the Workplace Gender Equality Report will confuse those reading Corporate Governance Reports. We believe that some companies will stay with the existing summarised disclosure requirements (proportions in senior executive positions etc.) whereas others will report against the six General Equality Indicators. It is not

clear what additional effort is required in preparing the existing Recommendation 1.5 (c) (1) Disclosures and whether there will be any information lost if reliance is placed on the General Equality Indicators.

Proposed Recommendation 1.5 and 3 - Commentary on disability and disadvantaged groups

We are surprised and disappointed that the Council has decided that disclosure of the number of people employed who have a disability is not a ‘corporate governance’ issue. This is exactly the sort of thinking that was held by some before the Council decided quite rightly to require statistics on diversity and gender diversity statistics. Why is diversity and in particular gender diversity any more important than disability? Where is the evidence for arguments used to oppose this proposal such as privacy, or difficulty of implementation?

Proposed Recommendation 2.1 Independent directors

We question whether a director who has been on the Board for more than 9 years can be ‘perceived to be independent’ after that length of time. We note that Independence is defined in the global accounting bodies’ standards as being both ‘seen to be and actually’ independent, so this criticism is not based on an individual’s attributes but on a market perspective. We note that the Council has stated that it will monitor developments in this area, however given debates on audit firm independence in the EU and the UK, we suggest that the tide has turned and the public interest view is that a sufficiently long time (9 or 10 years), does provide more than an indication of a question as to independence.

Alternatively we do support disclosure of the board’s opinion in cases where it forms the view that more than 9 years on a Board has not impacted independence, or adversely affected other defining characteristics of an independent director, as detailed in Box 2.1 of the proposed Principles (that is, interest, position, association or relationship - refer to paragraph 42 of the Consultation Paper).

Proposed Recommendation 2.4 (b) - Smaller listed entities - Alternative for Nomination Committee

Whilst we support the intent of the proposal to allow ‘smaller listed entities’ to meet the corporate governance principles by having alternative requirements, we suggest that it will not be immediately clear to a reader of the Corporate Governance Principles, whether a listed entity has availed itself of the various alternatives. Our suggestion is that there should be a requirement to identify at the start of the Corporate Governance Principles disclosure, whether a smaller entity has availed itself of the alternatives. This ensures that a smaller entity has properly considered the alternative requirements. We note that the Australian Accounting Standards Board requires similar disclosure where a company has adopted reduced disclosure requirements in its financial statements.

We also believe that the Council should provide a disclosure guideline as to what a smaller entity is, as otherwise there could be considerable disparity between different sized entities. We suggest that it should be a discloseable requirement to state that the smaller listed alternative has been used. We consequently do not support leaving this alternative open to other than smaller entities that will need to be defined, as it is our view that there is no justification for not having an audit committee if it was in say the top 300 companies by market capitalisation, which is the current ASX Listing requirement. On that basis we would suggest that the smaller listed entities alternative be only available to other than the top 300 listed entities by market capitalisation.

Hence our opposition is not to the specific proposed Recommendation - 2.4(b), but rather to the disclosure process.

Proposed Recommendation 6.2 – Investor relations program

We do not support the Council's view that there is no need for specific disclosure of specific steps that the entity has taken to solicit and understand the views of shareholders (e.g. analyst/investor briefings, face to face contact and/or surveys which the UK and Singapore Codes require). The Council's argument that this leads to boilerplate disclosures, is questionable when elsewhere in the Corporate Governance Principles, specific disclosures are required. In our view the absence of such steps would lead to a question as to whether the entity really is interested in a two-way communication process.

Proposed Recommendation 7.4: A listed entity should disclose whether, and if so how, it has regard to economic, environmental and social sustainability risks.

We are disappointed that the Council has merely required disclosure of whether and how economic, environmental and sustainability risks are covered. We concur at this time that Integrated Reporting is still too new (Framework being released by the end of 2013) despite its success in South Africa. However we find the discussion on other global developments in the Consultation Paper (page 20, paragraph 87) less than convincing, and we recommend that the Council adopts what is world's best practice in this area being the UK legislation (October 2007).

"In the UK, legislation came into effect in October 2007 that introduced the concept of an "enlightened shareholder value" duty. This duty broadly replaced the former duty to act in the company's best interests and requires directors to have regard to the longer term and to various 'corporate social responsibility' factors, including the interests of employees, suppliers, consumers and the environment." (Page 20, paragraph 85).

The Council's proposals might well be non-prescriptive, but fail this 'measured' test.

Additional Issues for consideration

Audit Firm Rotation

Whilst we have found very useful the various references to international developments in Corporate Governance which have influenced the Council in many of its proposals, we suggest that it would be beneficial to benchmark the proposals against what we believe are the most recognised and updated Corporate Governance requirements being the UK Corporate Governance Code. This would highlight some issues that the draft third edition has not considered, with the most obvious being the debate over audit firm independence in the UK and Europe, which has resulted in the UK Code requiring the top 350 companies having to disclose (if not, why not) where their audit has not been put out to tender in the last 10 years.

We believe that the Council should include this UK requirement in the third edition, given that the auditor independence requirements are part of global ethical standards, and the implementation of auditor independence is no different in Australia compared to the UK, Europe or elsewhere in the world.

We are of the view that the UK requirements represent a reasonable balance that is based on evidence emerging through debates on the need for audit partner rotation. We also note that some large Australian companies are now placing their audit out to tender, based on good corporate governance principles - Fairfax Media and Lend Lease are recent examples.

Failure to consider audit firm independence will risk black letter legislative action, and we note there is already black letter law in the Corporations Act on audit partner rotation, and similar black letter requirements in the global ethical standards.

Inclusion of a Specific Recommendation on Bribes

Given the current media debate on alleged illegal practices of some Australian organisations in paying bribes or facilitation fees to overseas government officers (e.g. Chanticleer 3 October 2013 – *Transparency never a strong suit: "The practice of paying kickbacks is rife within Asia, the Middle-East, East Africa and other parts of the world where Australian companies do business.")*, consideration should be given to making Boards accountable for ensuring that the risk management process inhibits companies from engaging in unacceptable if not also illegal practices. We suggest making an 'if not, why not' requirement for a clear statement of compliance on 'facilitation fees' as otherwise even more prescriptive legislation may be needed.
We note that the International Corporate Governance Network's (ICGN) Corporate Governance Principles (2009) state (section 3.4) that its expectation is that there should be stringent policies and procedures in place to avoid company involvement in such behaviour.

Inclusion of a Specific Recommendation on an effective whistle-blowing system

We further note that the ICGN (section 3.7) recommends that companies have a whistle-blowing mechanism in place and the board needs to be satisfied that any concerns are handled effectively. We suggest that this would be a further way of inhibiting corrupt behaviour, using an 'if not, why not' disclosure mechanism.

Annual Comments invited

In terms of timing or considering changes to the ASX CG Principles, we note that this will be the fourth time that the Principles have been reviewed (first introduced in 2003, and revised in 2007 and 2010).

We suggest that it would be useful for the Council to annually issue for public comment an Update on changes in global Corporate Governance thinking and that this would ensure that Australia's Corporate Governance requirements reflect world's best practice. Our view is influenced by the reality that financial reporting (accounting standards), auditing and ethical requirements are all based on international requirements, and we suggest that this should be no different to corporate governance requirements.

We therefore encourage the Council to work with international corporate governance groups to produce a global corporate governance 'standard' of principles, along the lines of the International Accounting Standards Board (IASB).

Early Adoption

Given the potential to de-clutter financial reports by disclosing some compliance with the Corporate Governance Principles on the specific entity's website, we suggest that, as with Accounting, Auditing and Ethical Standards, the Council allows the Principles to be adopted early. Given the current timetable of approval and release in early 2014, this would allow June 2014 balancers to significantly reduce the clutter in their Financial Reports by utilising their websites for detailed disclosures.

Use of the term 'stakeholders' compared to 'shareholders'

We question whether the Council has unintentionally caused confusion by the use of the term 'stakeholders' in place of 'shareholders'. The South African King Code of Governance distinguishes the two terms, and we suggest that the difference is significant; 'shareholders' are the legal owners of the company whereas 'stakeholders' is a wider group that includes suppliers, consumers and ultimately, the community. That said, we support the use of the term 'stakeholders' as explained in the King 3 Code (page 9) which states:

"*Although the board is accountable to the company itself, the board should not ignore the legitimate interests and expectations of its stakeholders. In the board's decision-making process, the inclusive approach to governance adopted in King II dictates that the board should take account of the legitimate interests and expectations of the company's stakeholders in making decisions in the best interests of the company*."

Specific proposals that the Council is interested in comments

Refer to the Appendix for our specific comments.

Proposed changes to the ASX Listing Rules and Guidance Note 9 Disclosure of Corporate Governance Practices

Subject to our specific comments on the proposed third edition, we support the proposed changes to the Listing Rules and Guidance (Note 9 Disclosure of Corporate Governance Practices).

If you require any further information or comment, please contact Keith Reilly - *keith.reilly@mq.edu.au*

Yours sincerely

Professor Nonna Martinov-Bennie and Keith Reilly - Industry Fellow
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Appendix

A. Specific proposals that the Council is interested in comment on

1. Whether stakeholders support the move by the Council to afford greater flexibility to listed entities to make their corporate governance disclosures on their website rather than in their annual report;

We strongly support this initiative as it will reduce clutter in the financial report.

2. Whether the structural changes proposed to the Principles and Recommendations, particularly the dropping of the separate reporting recommendations headed "Guide to Reporting on Principle [X]" under each of the 8 principles in the current edition in favour of "self-contained" recommendations in the third edition, each of which includes any applicable reporting requirements that need to be met for an entity to "follow" that recommendation for the purposes of Listing Rule 4.10.3; and the dropping of the separate sections "Application of Principle [X] in relation to trusts and externally managed entities" under each of the 8 principles in the current edition in favour of a unified section at the back of the draft third edition dealing with that issue in a more complete manner across all of the principles and recommendations, will make it easier for listed entities to understand and report against the Principles and Recommendations;

We support this proposal.

3. Where the Council is proposing to elevate items of commentary in the current edition (which do not trigger any reporting obligations) into recommendations in the third edition (which listed entities must report against under Listing Rule 4.10.3 on an "if not, why not" basis), whether stakeholders agree with that treatment and, if not, why not;

We support this proposal in principle subject to our other comments on specific Principles.

4. Where the Council is proposing wholly new recommendations, whether stakeholders agree with those recommendations and, if not, why not;

We support this proposal in principle subject to our other comments on specific Principles.

5. Whether compliance with any of the new recommendations (be they elevated from commentary in the current edition or wholly new) might have any unforeseen consequences or give rise to undue compliance burdens for listed entities;

We support this new Recommendation subject to our other comments on specific Principles.

6. Whether the level of commentary in the draft third edition is appropriate and whether stakeholders would like more guidance on any particular recommendations; and

We support the level of commentary, and do not believe any more guidance is needed, subject to our other comments on specific Principles.

7. Whether there are any other gaps or deficiencies in the Principles and Recommendations that have not been addressed by the proposed changes in the draft third edition.

Refer to our covering letter.

B. Specific comments on the proposed amendments

Principle 1 - Lay solid foundations for management and oversight.

Apart from our concern over the inconsistent disclosure on Gender Equality and the lack of disclosure on disadvantaged people (see our covering letter), we support the proposed amendments.
We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

UK Code

B3.1 & B 3.2 requires a job specification for directors and details of time commitment expected, and other significant commitments.

B5.1 Directors to have access to independent advice and committees be provided with sufficient resources.

B7.1 Top 350 directors subject to annual election along with non-executive directors past 9 years. New directors subject to an election and then every 3 years.

Principle 2 – Structure the board to add value

Apart from our disagreement with a director on the board for more than 9 years being seen to be independent (see our covering letter), we support the proposed amendments.
We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

UK Code

A4.1 Senior independent director appointed and available to shareholders if issues. Also ICGN 2.6 Lead Independent director.

A4.2 Chair should meet with non-executive directors without executive directors present. Non-executive directors should meet annually without the chair for chair appraisal.

A4.3 Minutes to cover concerns that can't be resolved and a resigning non-executive director to provide a written statement to the chair and board circulation if any concerns.

ICGN Global Corporate Governance Principles

1.1 Sustainable value creation

2.6 Lead Independent director

Principle 3 – Promote ethical and responsible decision-making

We support the proposed amendments.
We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

UK Code

C3.5 Audit Committee to ensure that staff whistle-blowing provisions work.

ICGN Global Corporate Governance Principles

3.4 Bribery and corruption

3.7 Whistle-blowing – mechanisms and handled appropriately.

South African King Code

1.2. & 2.4 The board should ensure that the company is and is seen to be a responsible corporate citizen.

2.9. The board should ensure that the company complies with applicable laws and considers adherence to non-binding rules, codes and standards.

Principle 4 – Safeguard integrity in financial reporting

Apart from our disagreement on how the smaller entities alternative is structured (see our covering letter), we support the proposed amendments.
We do however note that requiring the external auditor to attend the AGM may require some existing auditors who audit a number of smaller listed entities, to review the timing of the various AGMs. The Corporations Act does allow a 'representative' of the auditor to attend the AGM and this has happened in some instances. We however support the Recommendation that it be the external auditor, and whilst Recommendation 4.3 is only needed for the 5% of companies that are listed on the ASX but incorporated overseas, hence not subject to the Corporations Act, we support its inclusion.
We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

UK Code

C1.2 Explanation as to how value is preserved over the longer term and strategy.

C3.7 Top 350 should put audit out for tender every 10 years.

ICGN Global Corporate Governance Principles

6.4 Independent audit & disclosure of reasons for resignation.

Principle 5 – Make timely and balanced disclosure

We support the proposed amendments.

Principle 6 – Respect the rights of security holders

Apart from our disagreement on limiting this to general disclosures (see our covering letter), we support the proposed amendments.
We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

Recommendation 6.2: A listed entity should design and implement an investor relations program to facilitate effective two-way communication with investors.

UK Code

E.1 .2 and the Singapore Code, as detailed in the Consultation Paper (para 69) both require that the "…board should disclose in the annual report the steps it took to solicit and understand the views of shareholders, for example, through analyst/investor briefings, face to face contact and/or surveys of shareholder opinion. The Council believes that such a requirement again would tend to elicit "boilerplate" disclosures."

With respect, Macquarie University disagrees with the boilerplate statement. The company's shareholders are the owners of the company and therefore should be respected and given the right to have a detailed investor relations program that enables two-way communication.

Recommendation 6.3: A listed entity should disclose the policies and processes it has in place to facilitate and encourage participation at meetings of security holders.

The Consultation Paper notes that other Codes go further but that the Council does not consider the need to address this as it is already covered by the Corporations Act requirements. However this contradicts the Council's earlier statement that as 5% of listed companies are not incorporated in Australia, there are requirements for a CEO/CFO declaration and auditor availability at the AGM duplicating existing Corporations Act requirements. We don't find the statement that further law reform may occur in this area to be sufficiently persuasive for these requirements not to be included in the Principles.

Principle 7 – Recognise and manage risk

Apart from our disagreement on how the smaller entities alternative is structured, and the lack of any meaningful economic, environmental and sustainability risks requirements (see our covering letter), we support the proposed amendments.

However we suggest that the Council may wish to reflect on remarks made by David Murray (ex-CEO of the Commonwealth Bank and ex-Chair of the Future Foundation) at a Macquarie University Thought Leadership seminar held in Sydney in November 2013 where he questioned the lack of need for a 'Returns' Committee whereas a Risk Committee is seen as essential corporate governance, suggesting the emphasis should be on increasing shareholder value rather than just concentrating on risk.

We note that there are some particular requirements in international Corporate Governance Codes which we draw the Council's attention to and which we support:

ICGN Global Corporate Governance Principles

3.6 Compliance with laws.

South African King Code

6.1. The board should ensure that the company complies with applicable laws and considers adherence to nonbinding rules, codes and standards.

6.2. The board and each individual director should have a working understanding of the effect of the applicable laws, rules, codes and standards on the company and its business.

Recommendation 7.2: The board or a committee of the board should:
(a) review the entity's risk management framework with management at least annually.

South African King Code

It does not go as far as the South African code, which recommends that the board should ensure that risk assessments are performed on a continual basis and that management considers and implements appropriate risk responses.

Principle 8 – Remunerate fairly and responsibly

Apart from our disagreement on how the smaller entities alternative is structured (see our covering letter), we support the proposed amendments.

Alternative Recommendations for externally managed listed entities

Whilst we support the proposed modifications for externally managed listed entities, we suggest that there should be clear disclosure that such entities are applying a variation to the typical Corporate Governance Principles and Recommendations, and the reason why.

C. Specific comments on the Consequential proposed changes to the ASX Listing Rules and Guidance Note 9 Disclosure of Corporate Governance Practices

Apart from our earlier comments on specific issues with the Corporate Governance Principles and Recommendations, we support the proposed amendments.

MACQUARIE UNIVERSITY INTERNATIONAL GOVERNANCE AND PERFORMANCE RESEARCH CENTRE